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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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George A. Coury  
BACHMAN & LaPOINTE, P.C.  
Suite 1201  
900 Chapel Street  
New Haven, CT 06510-2802

EXAMINER

LOPEZ, CARLOS N

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/040,146

Applicant(s)

BRAUN, PETER

Examiner

Carlos Lopez

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 1-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's election without traverse of claims 1-5 in Paper No. 5 is acknowledged.

#### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show element 28 showing a protrusion described as described in the specification as a pocket clip. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Objections***

Claim 1 is objected to because of the following informalities: The term "adapted to" at line 4 & 7 of claim 1 fails to provide a positive structural recitation. It is suggested that "adapted to" be changed to - -constructed and arranged to- - in claim 1 line 4 & 7. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1) Claims 1-2, and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Musetti (US 4,809,715). Musetti discloses an extinguishing cigarette holder tube (10). The cigarette extinguisher includes a tube having an open end (12) and a closed end (30). The inside diameter of the tube includes a plurality of axially spaced reduced diameter portions (36) between the open end (12) and closed end (30). The plurality of reduced diameter portions engages the cigarette to extinguishes it in fast time (Column 2, line 11).

As for claim 2, the top of the reduced diameter portions (36) and closed end (30) provide an extinguishing area.

As for claim 5, the open end (12) has a sloped edge to define a short length side and a long length side wherein the long length side is longer than a cigarette and shorter length side shorter than a cigarette in order allow accesses to a cigarette.

2) Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al (US 4,660,575). Anderson discloses an extinguishing cigarette holder tube (10). The cigarette extinguisher includes a tube having an open end (40) and a closed end (16). The inside diameter of the tube includes a reduced diameter portion (28) between the open end (40) and closed end (16). The reduced diameter portion engages the cigarette and seals cylinder portion 12 to extinguish the cigarette (Column 3, line 53 and Column 4 line 4ff).

As for claim 2, extinguishing area is cylinder portion 12.


As for claim 3, the inside diameter of cylinder portion 12 is larger than the reduced diameter 28.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

  
STEVEN P. GRIFFIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

C.L  
March 7, 2003